

## **ARTICLE XVI-a WETLANDS PROTECTION**

**(Amended ATM 5/13/2002 – Article No. 20)**

**SECTION 1.** This article is adopted under authority of Section 6, Article 89 of the Amendments to the Massachusetts Constitution, known as the Home Rule Amendment, and General Laws Chapter 40, Section 21. The purpose of this Bylaw is to protect the floodplains, wetlands and related water resources, riverfront areas and adjoining land areas of the Town of Norwell by controlling any activities in or near wetlands and riverfront areas deemed to have a significant effect upon wetland values, including, but not limited to, the following: public or private water supply, groundwater and ground water quality, flood control, sedimentation and erosion control, storm damage prevention, water pollution prevention, wildlife and wildlife habitats, recreation, aesthetics, fisheries, fish and shellfish habitats, rare plant and animal species, and riverfront areas.

### **SECTION 2:**

- A.** Except as permitted by the Norwell Conservation Commission (“Conservation Commission”) or as otherwise provided in this Bylaw, no person shall remove, fill, dredge, alter or build upon or within one hundred (100’) feet of any bank, fresh water wetland, including without limitation, isolated vegetated wetlands, flat, marsh, meadow, bog, swamp, creek, river, stream, pond or lake, any land under said waters, any land subject to flooding or inundation by groundwater, surface water or tidal action other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, and other telecommunication services, without filing written Notice of this intention to so remove, fill, dredge, alter or build upon or within one hundred (100’) feet of said wetland resources and without receiving and complying with an Order of Conditions and provided all appeal periods have elapsed. Such Notice shall be sent by certified mail to the Norwell Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment.
- B.** Except as authorized by the Norwell Conservation Commission, no activity or alteration shall be permitted within a fifty (50’) foot buffer strip (“buffer strip”) between any wetland resource area, bordering vegetated wetland, and/or isolated vegetated wetland and any proposed site disturbance. Prohibited activities shall include, but are not limited to, the following: (1) new construction of any buildings, sheds, and/or driveways of any nature and type (excepting water dependent structures expressly approved by the Commission); (2) alteration, reconstruction or relocation of existing buildings, sheds and/or driveways of any nature or type; and (3) activities which involve or result in the removal, filling or altering of land within the buffer strip. Nothing herein shall preclude the maintenance of an existing structure located within the

**buffer strip. The Conservation Commission may allow the prohibited activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the buffer strip and its natural and consequential impacts and effects will not adversely affect the wetland values of this Bylaw.**

**SECTION 3. Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may request a determination from the Conservation Commission in writing. The Conservation Commission shall issue its determination, in writing, within twenty-one (21) days from the receipt of such request. The Commission, its agent, officers and employees, may enter upon the land upon which the proposed work is to be done in response to a request for a prior determination or for the purpose of carrying out its duties under this Bylaw and may make or cause to be made such examination or survey as deemed necessary.**

**SECTION 4. The same Notice of Intent, plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, Section 40, will be accepted as fulfilling the filing requirements of the Bylaw. Within twenty-one (21) days after receiving a Notice of Intent, the Conservation Commission shall hold a public hearing on the proposed activity. Notice of the date, time and place of said hearing shall be given by the Commission at the expense of the applicant not less than five (5) days prior to such hearing by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant by mail. The applicant may be present at said hearing and may be represented by counsel and shall be entitled to present evidence, call witnesses, and question any witnesses appearing at the hearing. The Commission shall make and keep a record of its proceedings and, upon request, shall furnish copies at reasonable cost. Said hearing shall be conducted simultaneously with the public hearing required to be held under the provisions of said Chapter 131, Section 40, and in conformity with said regulations promulgated by the Department of Environmental Protection.**

**SECTION 5. Unless otherwise set forth in a regulation hereinafter adopted by the Conservation Commission, the term set forth herein shall have the following meanings. The term "applicant", as used in the Bylaw, shall mean the person giving notice of intention to remove, fill, dredge, or alter wetlands or to perform any regulated activity within the area of jurisdiction defined by the Bylaw. The term "person" as used in this Bylaw, shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth, or any political subdivision of the Commonwealth, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents, or assigns.**

**SECTION 6: The Conservation Commission is empowered to deny permission for any removal, dredging, filling, or altering of subject lands within the Town if, in its judgment, such denial is necessary for the protection of public or private water supply, groundwater, flood control, storm damage prevention, and the prevention of**

**pollution or any of the wetland values protected hereunder. Due consideration shall be given to possible effects of the proposal on all values to be protected under this Bylaw.**

**Section 7: The Conservation Commission may, as an alternative to a denial, impose such conditions, as it deems necessary to contribute to the protection and preservation of the subject lands in accordance with the purpose of this Bylaw. An order of conditions issued under this Bylaw may be identical to such an order issued by the Norwell Conservation Commission under the provisions of M.G.L. c 131, sec. 40.**

**SECTION 8: The Notice required by Section 2 of this Bylaw shall not apply to emergency projects necessary for the protection of the health and safety of the citizens of Norwell and to be performed or, ordered to be performed, by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection and Conservation Commission if this Bylaw and Massachusetts General Laws Chapter 131, Section 40, as amended, are both applicable or by the Conservation Commission if only the Bylaw is applicable. In no case shall any removal, filling, dredging or altering authorized by such certification extend beyond the time necessary to abate the emergency.**

**The provisions of this Bylaw shall not apply to any mosquito control work done under the provisions of clause thirty-six (36) of section five of Chapter 40, or Chapter two hundred and fifty-two (252) or to work performed for normal maintenance or improvement of lands in agricultural use as of the effective date of this Bylaw.**

**SECTION 9: The Conservation Commission is authorized to establish filing fees to defray costs incurred in conducting hearings under the Wetlands Protection Bylaw and to adopt rules and regulations regarding the establishment and collection of such fees. Such rules and regulations may be adopted, or amended at any regularly scheduled meeting of the Conservation Commission subject to the approval of the Board of Selectmen. Upon such approval they shall be published once in a newspaper of general circulation in the Town, shall thereafter be posted for seven consecutive days in five conspicuous places, and shall become effective upon the expiration of said seven (7) days.**

**SECTION 10: In addition to the fees authorized by Section 9, Notices of Intent filed for business, commercial, industrial and/or subdivision projects shall reimburse the Town for certain costs incurred by the Town in processing the application, inclusive of consulting and expert fees incurred in reviewing any such proposals. The applicant shall, with submission of a Notice of Intent deposit with the Treasurer of the Town funds equal to one (1%) percent of the estimated cost of the project or five hundred dollars (\$500.00, whichever is greater. For business, commercial and industrial filings "estimated cost" shall mean the estimated cost of the entire project,**

including building construction. For subdivisions “estimated cost” shall mean the estimated cost of land preparation, grading, placement of utilities, and construction of roads and drainage systems. The Conservation Commission shall direct the Treasurer to expend such funds to pay for all reasonable design review by its consulting engineer, or by other professional persons required to assist the Conservation Commission to determine the adequacy of the submitted plan(s) with regard to M.G.L. C. 131, s. 40 and this Bylaw. However, no such payment shall be directed until fourteen (14) days after a photocopy of the bill purporting to represent charges for such services and review has been sent, by first class mail, to the applicant. If the applicant disputes the amount, the bill shall be reconsidered by the Conservation Commission, and the Commission’s decision will prevail. The balance of this account shall at no time be less than one-half the initial deposit; upon notice from the Commission by first-class mail, the applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit. Within twenty-one (21) days of issuance of a Certificate of Compliance, all remaining funds shall be returned to the applicant. The Conservation Commission may require similar deposits for filings by persons other than businesses if the submitted plan(s) require design review by its consulting engineer or other professional persons. If a deposit is required for a Request for Determination of Applicability, all remaining funds shall be returned to the applicant within twenty-one (21) days of issuance of an Occupancy Permit by the Building Inspector.

**SECTION 11:** The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land pursuant to warrant, court procedure, or other appropriate administrative order for the purpose of performing their duties under the Bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

**SECTION 12:** The Commission shall have the authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Upon request of the Commission to the Board of Selectmen, the town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law. Any person who violates any provision of this Bylaw, regulations or permits issued thereunder, shall be punished by a fine set by the Conservation Commission. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations or permit violated shall constitute a separate offense. In addition to the procedure of enforcement as described above, the provision of this Bylaw may also be enforced by the Commission or its agent, by non-criminal complaint pursuant to the provisions of M.G.L. Chapter 40, Section 21D. The penalty for violation of any provision of this Bylaw shall be \$100.00 for the first offense; \$200.00 for the second offense; \$300.00 for the third offense and each subsequent offense.

**SECTION 13:** The Conservation Commission may require the posting of a bond with or without surety, running to the municipality, and sufficient as to form and surety in the opinion of the Commission's Counsel, to secure faithful and satisfactory performance of work required by any Order of Conditions, in such sum and upon such conditions as the Conservation Commission may require. Other evidence of financial responsibility which is satisfactory to the Conservation Commission may be accepted in lieu of bonding. Notwithstanding the above, the amount of such bond shall not exceed the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such bond or other security shall be recoverable in an action in any court of competent jurisdiction. Such bond or other security shall be released upon issuance of a Certificate of Compliance.

The Commission may also consider a conservation restriction, easement, or other covenant enforceable in a court of law as a way to secure adherence to conditions imposed by the Commission. Such covenant shall be executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

**SECTION 14:** The Norwell Conservation Commission may, from time to time, adopt such other and further definitions. Regulations, fees and performance standards as it may deem necessary to protect the interest and/or intent of this Bylaw. Said definitions, regulations, fees and performance standards shall become effective upon publication following a public hearing.

**SECTION 15.** The invalidity of any section or provision of the Bylaw shall not invalidate any other section or provision thereof.

**NORWELL CONSERVATION COMMISSION  
RULES AND REGULATIONS  
FOR  
TOWN OF NORWELL WETLANDS BYLAW  
ARTICLE XVI-a**

**1. INTRODUCTION**

In order to assist potential applicants in the preparation for filings under the Town of Norwell Wetlands Bylaws, the Norwell Conservation Commission has adopted the following regulations.

**2. PURPOSE**

The purpose of these regulations is to define and clarify the process by which activities affecting areas subject to protection under the Bylaw are to be regulated in order to contribute to the following interests:

- a. Public Water Supply

- b. Private Water Supply
- c. Groundwater Supply
- d. Flood Management
- e. Storm Damage Prevention
- f. Prevention and Abatement of Pollution
- g. Protection of Land containing Shellfish
- h. Protection of Fisheries
- i. Protection of Wildlife Habitat

The purpose of these regulations is to define and clarify that process by establishing standard definitions and uniform procedures by which the Conservation Commission may carry out its responsibilities.

**WETLANDS FLAGGING REGULATIONS  
(ADOPTED FEBRUARY 16, 1988, revised on September 6, 1988)**

The following information shall be submitted to the Norwell Conservation Commission at the time of the filing of a NOTICE OF INTENT:

- 1. Wetlands flagging shall be marked on the site and shall be clearly visible in the field to the Norwell Conservation Commission or its agents.
- 2. Wetlands flagging shall be numbered consecutively on site, and on the corresponding site plan.
- 3. Each individual wetlands line shall be indicated on the wetlands flag by letter and consecutive number, and shall be indicated on the corresponding site plan.
- 4. Plans should clearly indicate the 100' buffer zone, as well as the 50' buffer strip. The plan should also indicate the buffer zone for all adjacent properties to the development.

**FILING A NOTICE OF INTENT  
NORWELL CONSERVATION COMMISSION**

**Read attached – General Instructions for Completing Notice of Intent” and “Notice of Intent Supplemental Form for Riverfront Area”.**

**SUBMIT TO DEP/SOUTHEAST REGIONAL OFFICE:**

- \_\_\_\_\_ Notice of Intent (2 copies)
- \_\_\_\_\_ Notice of Intent Supplemental for Riverfront Area  
(2 copies if applicable)
- \_\_\_\_\_ Stormwater Management Form (2 Copies if applicable)
- \_\_\_\_\_ \*Plans (2 copies)
- \_\_\_\_\_ Locus map identifying location of the property (2 copies)
- \_\_\_\_\_ Mail appropriate filing fee to DEP (send to lock box address), along with Fee Transmittal form.

**SUBMIT TO NORWELL CONSERVATION COMMISSION:**

- \_\_\_\_\_ Notice of Intent and Supplemental Forms (2 copies)
- \_\_\_\_\_ \*Plans (2 Copies)
- \_\_\_\_\_ Filing fees: Town share of filing fee, Bylaw Fee, Guaranteed  
Deposit (if Applicable), payable to Town of Norwell

**Notify abutters according to the DEP regulations (see attached  
abutter Notification Information and forms)**

## **\*PLANS:**

In addition to the requirements listed in the "General Instructions", plans must detail the following information:

\_\_\_\_\_ Location of wetlands (please read attached "Wetlands Flagging Policy")

\_\_\_\_\_ Delineation of the 100' buffer zone

\_\_\_\_\_ Delineation of the 50' buffer strip

***THE NORWELL CONSERVATION COMMISSION WILL NOT  
ACCEPT INCOMPLETE FILINGS. (TC/2/20/2001)***

## **VIOLATION POLICY**

### **NORWELL CONSERVATION COMMISSION *Adopted by Vote on May 2, 2001***

#### **Identification of Violations**

Violations are identified by two primary means: observations by the agent or conservation members (primarily existing or impending projects) and citizens (existing, impending, or unidentified projects). Reports of violations from neighbors and other citizens are always confidential. Conservation members and staff may not reveal the source of any report of possible violations.

When possible violations are reported to a Commission member or staff, the Conservation Agent will determine whether a violation exists and a Violation Notice is necessary. The Agent may consult with the chairman and other members at this stage, but if time or other constraints exist may proceed based on his or her best judgment.

#### **Violation Notices**

If the agent confirms or strongly suspects a violation, a Violation Notice will be issued. Violation Notices will direct the property owners and contractors to (1) stop work, (2) identify resource areas on the site, (3) install erosion controls, and (4) meet with the commission or its agent to discuss the violation. If a wetland line has been previously approved by the Commission, its location will be the basis for evaluation of the Violation. If a wetland line has not been established or approved by the Commission, then the Violation Notice will require the owner, developer, and contractor to employ a wetland scientist to identify wetland resource areas with flagging within a time frame not longer than one week from the date of the Violation Notice.

Upon that meeting, the Commission, in consultation with the agent, will consider the following aspects of the violation:

- Value of the area to the statutory interests
- Harm of the damage
- Immediacy of the harm
- Value of restoration
- Feasibility of restoration
- Potential legal outcomes
- Potential financial burden to the Town of Norwell



Based upon that review, the Commission and Agent will work quickly and informally with the owner, developer, and contractors to correct the Violation, will direct the owner, developer, and contractors to file an after-the-fact Notice of Intent, or will issue an Enforcement Order.

### **Enforcement Orders**

Enforcement Orders will be issued by the Commission when there is a serious Violation which requires an approved plan to correct, and or a Violator is not cooperating to correct the Violation. Enforcement Orders list the Conditions that the owner, developer, and contractors must meet to resolve the Violation. No work will continue on the project until the conditions of the Enforcement Order have been met. A copy of the Enforcement Order will be sent to other Town Boards.

### **Reporting**

All Violation Notices and Enforcement Orders will be noted. A list, including address and location of the property owner developer, and primary contractor, will be maintained by the agent and staff. This list will be posted in the Conservation Commission office and on its website. Upon adoption of this policy, a list of Violations from January 1, 2000 will be compiled and posted.